

ORIGINAL

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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In the Matter of)

Assessment and Collection)
of Regulatory Fees for)
Fiscal Year 1998)

MD Docket No. 98-36

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**TO:** The Commission

**Comments of the
National Association of Broadcasters**

The National Association of Broadcasters ("NAB")¹ submits these comments on the Commission's *Notice of Proposed Rulemaking*. NAB urges the Commission to adopt the alternative schedules for calculating regulatory fees for AM and FM radio stations described in paragraph 26 of the *Notice*.

As an initial matter, NAB is concerned about the steady growth in the level of regulatory fees that are imposed on broadcasters and other Commission licensees particularly since the total of regulatory fees and application fees collected under Section 8 of the Communications Act, 47 U.S.C. § 158, now appears to be greater than the Commission's budget. It would be especially disturbing to the FCC's regulatees were the 15 million dollar annual cost of the Commission's proposed move to the Portals to be added to future regulatory fee collections.

¹ NAB is a nonprofit, incorporated association of broadcast stations and networks. NAB serves and represents the American broadcasting industry.

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For the second year, the Commission proposes to base regulatory fees for AM and FM stations on a calculation of the population served by each commercial radio station. *Notice* ¶ 21. In response to concerns that the protected signal contours used in calculating FY 1997 fees resulted in stations being attributed listeners that they could not actually serve, the Commission proposes to use city grade contours to determine FY 1998 fees.

NAB supports the Commission's proposed change in the way it calculates the populations stations serve. Using protected contours often resulted in large urban populations being attributed to suburban or rural stations whose signals might be protected in those communities, but which in fact are not effectively received outside of their immediate service area. Including only the population within a station's city grade contour will more realistically delineate the population that stations serve and thus establish fees based on the population that a station might conceivably reach.

The *Notice* (Attachment B) states that the Commission based its proposed FY 1998 fee schedules for AM and FM stations on the number of stations that paid regulatory fees for FY 1997. The number of stations that paid in 1997, however, is far less than the actual number of operating commercial radio stations. Some of this discrepancy may be explained by stations that operate commercially but are owned by non-profit entities that are exempt from the obligation to pay regulatory fees. The Commission has recently required such entities to provide proof of their non-profit status, an action that NAB applauds. *See* FCC Public Notice, *Documentation of Nonprofit Exemption from Regulatory Fees* (Jan. 14, 1998).

It appears, however, that a significant amount of the discrepancy between the number of operating stations and the number of fee payers that Commission identified is the result of other factors,

such as stations that did not pay, or stations that paid, but whose payments were not properly credited by the Commission's lockbox bank or pay its own staff. Again, the Commission has recently contacted stations for which it has no record of payment to request that stations either provide proof of payment or now submit payment of their FY 1997 regulatory fees. NAB strongly supports the Commission's efforts to ensure that some radio stations do not avoid the obligation to pay regulatory fees that Congress imposed on the industry.

The approach proposed in the *Notice*, however, under which fees for FY 1998 would be increased because some stations either did not pay or were not credited with payment of their FY 1997 fees, is inequitable. Not only would it reward non-paying stations for failure to comply with the Commission's requirements, it would penalize those stations that did meet their obligations. If some stations in fact failed to pay regulatory fees (as opposed to a failure by the FCC properly to credit such payments), the proper response is for the agency to aggressively collect the unpaid fees, rather than increasing the burden on other stations. The Commission, therefore, should revise whatever fee schedule it adopts based on the total number of operating commercial AM and FM stations, excluding only those which have demonstrated their non-profit status.²

The *Notice* (§§ 24-26) asks for comment on two different fee schedules for radio stations. One follows the approach the Commission adopted in 1997, under which all stations are divided into

² At its January 1998 meeting, the NAB Radio Board expressed strong concern about the prospect that fees might be increased because the Commission failed to collect required payments from some stations. It reiterated that view in a conference call on April 17, 1998. If the Commission were not to charge fees to all commercial stations (other than those operated by non-profit entities), the validity of the entire regulatory fees collection program would be seriously compromised.

ten different categories, with their populations weighted by their class. Fees are then evenly distributed among those ten levels at a proposed 250 dollar increment between levels.

The Commission should not adopt this approach to setting fees for FY 1998. Most, if not all, of the stations and owners who contacted NAB or who expressed their views on the FY 1997 fees did not understand the weighting process by which their stations' class was used to determine their fees. The schedule proposed for FY 1998 uses precisely the same methodology and would also leave licensees in the dark about the way in which their fees were established. Further, many stations believed that the increments between fee levels were too low in FY 1997, resulting in similar fees for widely varying stations. Again, the fee schedule proposed for FY 1998 would not alleviate those concerns.

The alternative schedules proposed in paragraph 26 of the *Notice*, however, would address both of these problems with the FY 1997 fee schedule. The alternative schedules explicitly vary fees by station class. Two stations serving the same geographic area, but which have different class licenses, will pay different fees. Although that might occur with the schedule proposed by the Commission, there are many circumstances in which it might not. Further, and more importantly, licensees can readily understand how their particular fee was established under the alternative schedule, instead of having to rely on the Commission's assurances that their population was accurately weighted by their class.

The alternative schedule also provides for more fee categories and for higher fees for very large stations. This would result in a more equitable distribution of fees, as well as greater differences in fees between stations. This is likely to result in a greater perception of fairness among radio licensees as it better reflects the distribution of stations in the industry.

The Commission comments that the alternative fee schedule does not necessarily reflect the precise ratio among classes established by Congress for FY 1994, something the Commission's plan purports to do. *Notice* ¶ 26. In fact, the alternative schedule is closer in effect to the fee schedule originally adopted by Congress because, within the same geographic area, it continues to vary fees among stations by class. Under the approach used in FY 1997, and proposed for FY 1998, stations with differing classes may pay the same fee. Further, there is nothing in the fee provisions of the Act which requires the Commission to retain the same fee structure that Congress originally adopted; indeed Congress gave the FCC explicit authority to change the way in which it assesses regulatory fees in order to achieve a more equitable result. NAB, therefore, urges the Commission to adopt a fee schedule similar to the alternative schedule proposed in paragraph 26 of the *Notice*.³

Conclusion

For the foregoing reasons, the Commission should revise its FY 1998 fee schedules to reflect an expectation of payment from all commercial AM and FM radio stations, except for those that have established their non-profit status. Using the resulting number of paying stations, the Commission

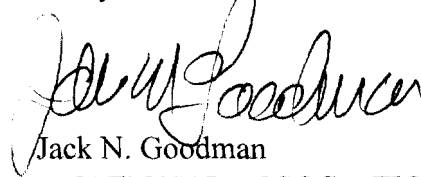
³ Of course, the precise fee levels will have to be recalculated to reflect the total number of stations subject to fees, instead of only the stations which the FCC credited with paying fees in 1997.

should adopt a fee schedule similar to the alternative schedule proposed in the *Notice* under which differences in fees based on station class are explicitly set forth.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "H. Bauman", with a long horizontal flourish extending to the right.

Henry L. Bauman

A handwritten signature in black ink, appearing to read "Jack N. Goodman", with a large, stylized initial "J" and "G".

Jack N. Goodman

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